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MAY 26 2005

OFFICE OF PETITIONS

In re Application of :
David L. Anglin :
Application No.: 09/829,709 :
Filed: April 10, 2001 :
Attorney Docket No: 08935-240001 / M-4931A :

This is in response to the petition under 37 CFR 1.137(b) filed April 15, 2005.

The petition under 37 CFR 1.137(b) is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extension of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C § 704.

A final Office action was mailed in the above-cited application on July 14, 2004, allowing for an extendable statutory period for reply of three months from its mailing date. An amendment was filed on November 17, 2004, along with a request for an extension of time within the first month. The examiner assigned to the application issued an Advisory Action on December 21, 2004, noting that the responses did not place the application in condition for allowance. No further responses were received within the allowable period and the application became abandoned on November 15, 2004. A Notice of Abandonment was mailed on April 5, 2005.

The requirements for a successful petition filed under 37 CFR 1.137(b) are:

- (1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(m) which is currently \$750.00 (small entity);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition lacks item (1) above.

As to item (1), the petition was not accompanied by a proper response to the final Office action. Although petitioner indicates that a Request for Continued Examination was filed with the petition, a review of the record did not reveal such a filing. Any renewed petition filed must be accompanied by a proper reply to the final Office action.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 United States Patent and Trademark Office
 Box 1450
 Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
 Attn: Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions